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No. 94-8769

Supreme Court, U.S.
FILED
JUN 5 1995
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

TOMMY L. RUTLEDGE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Solicitor General

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QUESTION PRESENTED

Whether petitioner's conviction and sentence for drug conspiracy, in violation of 21 U.S.C. 846, must be vacated in light of his conviction and sentence for operating a continuing criminal enterprise (CCE), in violation of 21 U.S.C. 848.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 40 F.3d 879.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1994. A petition for rehearing was denied on January 3, 1995. The petition for a writ of certiorari was filed on April 3, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Central District of Illinois, petitioner was convicted on one count of operating a continuing criminal enterprise (CCE) (Count 1), in

rights under the Double Jeopardy Clause. The court rejected that claim, holding that "[w]hile the conspiracy charge is a lesser included offense of the CCE charge, double jeopardy is not implicated as long as [the] district court does not impose cumulative sentences for the crimes." Pet. App. 9a.

ARGUMENT

Petitioner renews his claim (Pet. 4-15) that the district court violated his double jeopardy rights by entering judgment and imposing sentence on both the CCE and the drug conspiracy. He contends that there is a conflict in the circuits concerning the proper treatment of dual convictions on CCE and drug conspiracy charges.

As we explained in our brief in opposition to the certiorari petition in Wingo v. United States, cert. pending, No. 94-7980, the courts of appeals are divided on that issue.¹ As in Wingo, however, it does not appear that the defendant in this case would suffer any prejudice as a result of the conviction and sentence on the drug conspiracy count. In general, petitioner could suffer prejudice as a result of that conviction and sentence only in two situations, neither of which is likely to occur.

First, the judgment and concurrent sentence on the drug conspiracy count could become significant if petitioner's convictions and sentences of life imprisonment on both the CCE and substantive drug distribution counts were overturned. That is very

¹ We have provided petitioner with a copy of our brief in opposition in Wingo.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
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CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the **BRIEF FOR THE UNITED STATES IN OPPOSITION** by first class mail, postage prepaid, on this 5th day of June 1995.

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Solicitor General

June 5, 1995